

1 and placed him in the rear of the patrol vehicle. During that
2 period of time he was getting very upset at the fact that I was
3 taking possession of the weapons.

4 Q Okay. Because of the nature of the --

5 A Because of the nature of the situation. At that time
6 Mr. Leuschen was at times being very defensive, offensive,
7 upset, questioning my right to do this and so forth and so on.
8 I felt I was by myself, that the best thing would be to do is
9 get him from the scene. I did not remove all the ammo from the
10 car. At that time I basically tried to check to see if any more
11 weapons were in the vehicle. I did manage to pat Mr. Leuschen
12 around the waist to see if he had any weapons underneath his
13 overalls. He became offensive with that, so I told him in order
14 to get this straightened out, he would have to follow me to the
15 State Police station.

16 Q Did he do that?

17 A He did. I pulled out and he did follow me from that
18 point to the Girard Station. During that drive, I got on the
19 radio, advised him of the situation, that was my first chance
20 back to the radio to actually get to use it.

21 Q Okay. What happened at the police barracks?

22 A As I arrived, the officers came out of the station, Mr.
23 Leuschen was --

24 MR. D'ALBA: Excuse me, Your Honor.

25 THE WITNESS: -- escorted into the station.

1 THE COURT: Just a minute, trooper.

2 MR. D'ALBA: I question the relevancy of what
3 happened at the station.

4 MR. ZAK: Well, I think that I'm trying to elicit
5 evidence as to what the trooper did which lead to these
6 charges being filed.

7 MR. D'ALBA: What he did, again, what relevance is
8 it, more or less likely to prove a fact in evidence and
9 I don't see that it is, Your Honor.

10 THE COURT: I would accept the line of questioning
11 as long as we don't get any further astray, and I
12 presume you're about to the end of this line of inquiry
13 anyway, aren't we?

14 MR. ZAK: I am.

15 THE COURT: I'll overrule the objection and allow
16 the testimony.

17 MR. D'ALBA: Thank you, Your Honor.

18 MR. ZAK: All right.

19 BY MR. ZAK:

20 Q So what did you do at the station?

21 A Mr. Leuschen was placed under arrest when we got back
22 to the station and there was other officers around.

23 Q All right.

24 MR. ZAK: Cross-examine?

25 THE COURT: Before you do that, Attorney D'Alba,

1 if we are going to be protracted cross-examination, it
2 might be a good time to break. If it would be
3 relatively brief, we will let you do it. But I don't
4 want to curtail your questioning, it might be smarter
5 just to break at this point.

6 MR. D'ALBA: I don't think I'll be all that long,
7 Your Honor, but it might be best.

8 THE COURT: Let's do that because we still have a
9 preliminary matter that we want to get on the record.

10 (Whereupon, Court recessed at 11:20 a.m. and
11 reconvened at 11:30 a.m.)

12 (Whereupon, the following discussion occurred in
13 chambers.)

14 THE COURT: I think we want to put on the record
15 your motion to amend the information and Mr. D'Alba's
16 comments to that.

17 MR. ZAK: I have -- also there is a housekeeping
18 matter. The record should reflect that the jury was
19 selected in the absence of the court and off the record
20 without the stenographer present, and that's the normal
21 Erie County practice. And I just want confirmation
22 from Mr. D'Alba that was done with his consent.

23 MR. D'ALBA: So confirmed and consented to.

24 MR. ZAK: And I would make a motion at this time
25 to amend Count 4 of the Information as drawn by the

1 District Attorney's Office, that's a summary offense,
2 loaded firearms a violation of 34 PS 2503. There is a
3 reference to the .22 caliber revolver with six shells,
4 that's being amended to the .243 caliber rifle and
5 whatever cartridges it had in it that was already
6 admitted into evidence. That was a clerical error and
7 I don't believe there is any prejudice to the defense.

8 THE COURT: Do you have a comment to that request,
9 Attorney D'Alba.

10 MR. D'ALBA: No, Your Honor, we don't object to
11 that.

12 THE COURT: We will accept the amendment as such
13 and we will delete the reference to the .22 caliber
14 revolver that is in Count 4, which is the summary that
15 I'm to decide, and in its place, substitute the .243
16 caliber rifle and cartridges pertaining to that.

17 MR. ZAK: That's all that the Commonwealth would
18 have at this time.

19 THE COURT: Do you have anything further at this
20 time, Attorney D'Alba?

21 MR. D'ALBA: No, Your Honor.

22 THE COURT: Do we have any matters preliminarily?
23 Attorney D'Alba has submitted some points, we can do
24 those at the end of the day or we can at one-thirty.

25 MR. ZAK: I'd be willing to do them any time at

1 the Court's convenience because of -- I would like to
2 finish our case, in fact, all testimony today because
3 one of my witnesses, one of the trooper's got -- the
4 charging officer is scheduled for vacation tomorrow.

5 (Whereupon, a discussion was held off the
6 record.)

7 (Whereupon, discussion in chambers was concluded.)

8 THE COURT: Mr. D'Alba, I think you were ready to
9 cross-examine the trooper?

10 MR. D'ALBA: That is correct, Your Honor.

11
12 CROSS-EXAMINATION
13

14 BY MR. D'Alba:

15 Q Trooper Myers, is it?

16 A Yes.

17 Q Thank you, sir. Trooper Myers, I'm going to ask you
18 several questions and if at any point, you have difficulty
19 hearing me, don't understand my questions, simply ask me and
20 I'll repeat it.

21 Now, trooper, you indicated that you were patrolling
22 alone in your marked police car, correct?

23 A Yes.

24 Q And that was along Old Lake Road?

25 A Old Lake Road.

14

1 Q It was near an intersection, I believe, correct?

2 A It's about a half a mile west of Rudd Road in
3 Springfield Township.

4 Q Would you tell us what's along -- what's adjacent to
5 Old Lake Road?

6 A Lake Erie.

7 Q And in between the road and Lake Erie, is there any
8 houses there, sir?

9 A No.

10 Q No houses, there is no businesses, no amusement parks,
11 nothing of that nature, correct?

12 A No.

13 Q And to the south of Old Lake Road is all woods,
14 correct?

15 A Yes.

16 Q And to the north of Old Lake Road is also wooded,
17 correct?

18 A Wooded area, then the lake.

19 Q Drops down to the lake?

20 A Right.

21 Q Would you agree with me, sir, that this area is used
22 primarily for hunting?

23 A During hunting season, yes.

24 Q You also testified that when you arrived upon Mr.
25 Leuschen's vehicle, that his head was down, is that correct?

1 A Yes.

2 Q The positioning of his head being down, would that be
3 consistent with someone if they were zipping up a jacket? It
4 would be, correct?

5 A Yes.

6 Q Thank you. And you also indicated that his car
7 contained other items of clothing?

8 A A good deal of items.

9 Q And it also contained a bright orange or bright red
10 hunting cap, did it not?

11 A I did not see one, no.

12 Q Okay. Are you saying that it didn't or you just don't
13 recall that?

14 A I don't recall it, I went through the vehicle.

15 Q Now, regarding his clothing that Mr. Leuschen was
16 wearing, he was wearing a camouflage jump suit, is that right?

17 A Insulated coveralls.

18 Q That zip up the front?

19 A Right.

20 Q The type that you'd wear when you do outdoor activities
21 such as hunting, correct?

22 A They can be in different situations, yes.

23 Q But the camouflage nature of it makes it more geared to
24 hunting, generally speaking, correct?

25 A Hunter orange is generally for hunting, yes.

1 Q Okay. Now, would you agree with me also, sir, that if
2 you were out in the woods, although it may be 40 or 45 degrees
3 out, that being out in the woods and walking and being quite
4 physical at times could cause your body to warm up, would you
5 agree with that statement?

6 A I imagine if you walked hard enough.

7 Q Okay. And you'd also agree that when you got back to
8 your car, the first thing you might take off might be your hat,
9 correct?

10 A Could be.

11 Q Could be, thank you. Do you recall what type of
12 footwear Mr. Leuschen was wearing?

13 A Nothing as far as any big boots or anything like that.

14 Q If I told you that he was indeed wearing a pair of
15 boots, would you have a present recollection to the contrary,
16 sir?

17 A No.

18 Q So, in fact, he could very well have been wearing
19 boots?

20 A Type of a boot, yes.

21 Q Perhaps a hunting-type boot?

22 A I don't recall.

23 Q Now, when you pulled up alongside or in the proximity
24 of Mr. Leuschen's vehicle, Mr. Leuschen voluntarily exited his
25 vehicle, correct?

1 A Yes.

2 Q And at that point he ran from the vehicle, right?

3 A Pardon?

4 Q Did he run from the vehicle?

5 A No.

6 Q He didn't -- never fled, did he?

7 A No.

8 Q And when he exited his vehicle, he didn't have any guns
9 on him?

10 A No.

11 Q He didn't make any attempt to hide the guns in the car,
12 did he? He left them sitting on the seat, correct?

13 A Correct.

14 Q And, in fact, the .22 revolver was sitting in your
15 plain view on the front seat of the car?

16 A Yes, it was.

17 Q Despite the fact that he would have had an opportunity
18 to hide the gun or attempt to hide the gun, correct?

19 A It's possible.

20 Q I mean -- I'm sorry, I don't want to interrupt you.

21 A It's possible, he could have.

22 Q Okay. Thank you. You began talking with him, you
23 asked him if the gun was loaded, he said yes, sir, it is,
24 correct?

25 A Yes.

1 Q And also the 9mm gun was also on the front seat,
2 correct?

3 A Yes.

4 Q Plain view?

5 A Yes.

6 Q You asked him if it was loaded, he said yes?

7 A Yes.

8 Q And, in fact, the gun was loaded?

9 A It was.

10 Q And there was also a holder for that 9mm, is that also
11 correct?

12 A It was the box that it was probably purchased in, yes.

13 Q And the gun was not in that box, was it?

14 A No, it wasn't.

15 Q So the gun was removed from that box for some purpose?

16 A Yes.

17 Q And likewise with the .22 caliber revolver, there was a
18 holster, I believe you testified to, for that .22 caliber
19 revolver, but the gun was not in that revolver, was it?

20 A No, it wasn't.

21 Q Thank you. Now, the .357, however, that was not on the
22 front seat?

23 A Correct.

24 Q That was under the seat?

25 A That was not under the seat, it was in the back between

1 the two seats under clothing and whatnot.

2 Q Okay. So it wasn't clearly visible to you?

3 A No, it wasn't.

4 Q Did you ask Mr. Leuschen if there was any other guns in
5 the car or did he voluntarily tell you that?

6 A He gave me the permit for the .357. I asked him where
7 the .357 was.

8 Q And he told you its correct location?

9 A It was in the car.

10 Q Thank you. So, in fact, your subsequent investigation
11 of every question you asked Mr. Leuschen was confirmed, what he
12 stated to you?

13 A As far as the weapons, yes.

14 Q As far as the weapons okay. Now, how about as far as
15 identification? You asked him for a driver's license, correct?

16 A Yes.

17 Q Before you asked him for a driver's license, did you
18 ask him his name?

19 A I don't believe.

20 Q Isn't it your normal procedure to ask someone for their
21 name?

22 A No.

23 Q Okay. But at no point did he lie to you about his
24 name, did he?

25 A No.

1 Q He gave you the driver's license, which correctly
2 identified him, it wasn't falsified in terms of his name?

3 A No.

4 Q Now, you indicated that at some point he became on the
5 offense?

6 A Yes.

7 Q That was -- he became upset because you placed him
8 under arrest, correct?

9 A No, he became upset when I questioned his legality of
10 having them guns loaded in the car.

11 Q Okay. But you used the word offensive earlier today,
12 by offensive, you didn't mean that he tried to hit you in any
13 way, did he?

14 A No, argumentative, upset.

15 Q Did he raise his voice to you?

16 A Not so much.

17 Q If --

18 A Not so much yell, it was the manner in which he became
19 very --

20 Q Mad?

21 A -- upset whenever I questioned him about the guns.

22 Q But he never yelled at you?

23 A No.

24 Q In fact, you never had to handcuff him at the scene?

25 A I didn't handcuff him at the scene.

1 Q Now, in addition to the driver's license, you also took
2 several other documents from him, did you not?

3 A He produced -- if you're talking about the license,
4 yes, two provisional licenses.

5 Q So you took a hunting license, correct?

6 A Hunting license.

7 Q Fishing license?

8 A No, I never saw a fishing license.

9 Q Archery license?

10 A No archery license that I know of, unless it was -- the
11 stamps may have been in the container for the hunting license, I
12 didn't look.

13 Q Do you recall the duck stamp?

14 A I didn't recall the duck stamp.

15 Q And the guns that were seized from Mr. Leuschen all
16 were registered to Mr. Leuschen, correct?

17 A I am not aware of that.

18 Q But you don't have any information to the contrary?

19 A The three --

20 Q The question calls for a yes or no answer.

21 A Ask the question again.

22 THE COURT: Let me explain so that the jury
23 understands where we are going. Ladies and gentlemen
24 of the jury, normally it's easier to follow if the
25 witness will answer yes or no to the question; however,

1 he's not limited to that. After he answers yes or no,
2 he's certainly welcome to explain his answer and I
3 guess there would be occasions when the answer would be
4 "I don't know." So if we try to follow that question
5 and answering method, it will be clearer to all of us.
6 So trooper, if you can, we'd appreciate that.

7 THE WITNESS: Yes.

8 THE COURT: Thank you. Would you want to answer
9 that question?

10 THE WITNESS: If he would ask it again, please.

11 THE COURT: Would you read the question?

12 BY MR. D'ALBA:

13 Q It is true, trooper, is it not, that you don't have any
14 information to the contrary that the guns were registered to Mr.
15 Leuschen?

16 A I do have information to the contrary on one of them.

17 Q Do you have information that the gun was registered to
18 someone else other than Mr. Leuschen?

19 A No.

20 Q So, in fact, the information that you have is all
21 consistent that the guns are Mr. Leuschen's?

22 A Yes.

23 Q Thank you. And in your conversations with Mr.
24 Leuschen, you asked him what he was doing and he told you he was
25 out shooting?

1 A Yes.

2 Q And you also testified that you didn't see any targets
3 around, correct?

4 A No, there wasn't any.

5 Q That you're aware of?

6 A That I'm aware of.

7 Q And you also testified that you didn't see any spent
8 casings?

9 A Right.

10 Q How far from the vehicle did you go in an attempt to
11 determine if there were any spent casings?

12 A I never searched any further than right around the
13 vehicle.

14 Q Generally, sir, when people hunt, do they hunt standing
15 on the road or do they go into the woods?

16 A Normally in the woods.

17 Q So if there were any spent casings and if he was
18 hunting, the spent casings would tend to be in the woods and not
19 at the roadside where you were, correct?

20 A Yes.

21 Q Thank you officer. And, in fact, Mr. Leuschen told you
22 that the guns he had were for hunting?

23 A Yes.

24 Q And you testified earlier that his hunting license was
25 not on his clothing, but was in the blue bag?

1 A Was in the car, he got it from the inside of the car.

2 Q Okay. Did he have any difficulty locating it or he
3 went right to it, didn't he?

4 A He looked through his glove compartment, the blue bag
5 and somewhere within the passenger's side. He did, you know,
6 bring it out.

7 Q So you're not exactly sure as to the specific detail
8 there?

9 A No, because he brought out several papers.

10 Q Okay. Then the only other time that he was or became
11 upset or offended in your words was when he was patted down?

12 A Yes.

13 Q It's not unlikely that he was -- may have felt that he
14 was being placed under arrest at that point, correct?

15 A I made no inference to it and it wasn't a full pat
16 down, I just checked around his waist.

17 Q You generally pat people down before you arrest them,
18 don't you?

19 A Yes, I do.

20 Q Thank you. Then you told Mr. Leuschen to get in his
21 car and follow you to the police station, the State Police
22 barracks at Girard so you could get this matter resolved,
23 correct?

24 A No, I told Mr. Leuschen that he could -- if he wanted
25 to correct it, he could follow me to the station.

1 Q So at that point it was up to him whether he followed
2 you to the station?

3 A Yes, it was.

4 Q So at that point, if he didn't follow you, that would
5 have been the end of it?

6 A Yes.

7 Q So at that point in your mind, there was no violation
8 of the law, correct?

9 A Oh, there was definitely a violation of the law.

10 Q But you weren't going to fulfill your duty, you were
11 just going to let it go?

12 A If he would have drove off, I would have followed him
13 and stopped him when I had some help.

14 Q I'm sorry, I don't follow your statement here, it's
15 probably my fault, but you testified that it was up to him to go
16 to the police station?

17 A I told him he could follow -- if he wanted to correct
18 the situation, to follow me to the station, yes.

19 Q Was your understanding that he had to follow you to the
20 police station or not?

21 A If he hadn't followed me, I would have radioed for
22 another car and followed him until I got some help to stop him.

23 Q But he did indeed follow you?

24 A He followed me.

25 Q Never made an attempt to elude you?

1 A No.

2 Q No attempt to flee?

3 A No.

4 Q Went straight to the police barracks?

5 A Yes, followed me to the police station.

6 MR. D'ALBA: Your Honor, I have no further
7 questions.

8 THE COURT: Mr. Zak?

9 MR. ZAK: Your Honor, I have a few questions on
10 redirect, if I may pick up where Mr. D'Alba went on.

11

12 REDIRECT_EXAMINATION

13

14 BY MR. ZAK:

15 Q When you told Mr. Leuschen to follow you to the police
16 station, did you have his guns in your possession?

17 A I had them in the back of the patrol vehicle, yes.

18 Q Okay. And also, at that point, did you suspect him of
19 being in violation of the law?

20 A Yes, I did.

21 Q Why didn't you arrest him then?

22 MR. D'ALBA: Objection, irrelevant.

23 MR. ZAK: He brought it up.

24 THE COURT: I'm going to overrule the objection
25 and direct the witness to answer the question.

1 THE WITNESS: He was hostile to the point where if
2 I would have made an attempt, we would have had some
3 problems. And I had nobody coming to assist me because
4 I hadn't ever gotten the opportunity to get back to the
5 radio with what I found when I approached his vehicle.

6 BY MR. ZAK:

7 Q Okay. So it would be fair to say that if you wanted
8 help, you had to go back to your car to radio for help?

9 A And leave him, yeah, leave him and go to the car.

10 Q Now, why did you pat him down?

11 A Several times I had to turn my back on him, I wanted to
12 make sure he had no other weapons underneath his coveralls.

13 Q And are you familiar with the area that you found him
14 in?

15 A Yes, I am.

16 Q And how are you familiar with that area?

17 A I patrol it normally once or twice a shift.
18 Personally, I hunt on that land, been 20 years, 21 years driving
19 through it.

20 Q All right. And in February when you patrolled through
21 there have you -- or gone through there for any purpose, do you
22 find hunters there?

23 A Not in February, no.

24 Q And you indicate you have hunted on that land, what
25 have you hunted for?

1 A Small game and deer during deer season.

2 Q You hunt for anything in February?

3 A No.

4 Q Does anyone hunt there for anything in February?

5 A Not that I know of.

6 Q Are there woodchucks on that property?

7 A This is a wooded area, it's not fields, it's not
8 normally habitat for woodchucks, I believe.

9 Q Have you ever hunted woodchuck?

10 A Yes.

11 Q And where does one hunt woodchuck?

12 A Usually in fields, clover fields, hay fields that are
13 mowed and cut.

14 Q In other words, it's open country?

15 A Yes, open country.

16 Q Are there any game that one can hunt all year round in
17 the area in question?

18 A Woodchucks are one that you can, I believe, I believe
19 you can hunt year round. I believe crows are migratory, they
20 are not in our area during that period of time.

21 Q And from your experience, do woodchucks hibernate
22 during that period?

23 A Yes.

24 Q Now, did Mr. Leuschen indicate to you in any way what
25 he was shooting at?

1 A No, not at all.

2 Q And from your experience in hunting and shooting, do
3 hunters normally leave empty casings where they've ejected from
4 the weapon or do they pick them up?

5 A It depends on what type, whether he reloads or not.

6 Q Now, the weapons that you recovered, are those
7 reloadable casings?

8 A All but the .22 shells.

9 Q So the rifle cartridges, the 9mm, the .357, those can
10 be saved and recycled, is that right?

11 A Right.

12 Q Is it the practice or is it not the practice of hunters
13 and shooters to save those casings?

14 A It depends on the hunter, whether they reload or not.

15 Q And did you find any fishing equipment in the car in
16 question?

17 A Not that I saw, I was not there during the -- when the
18 car was completely, you know, gone through.

19 Q And did Mr. Leuschen mention any particular game of any
20 sort?

21 MR. D'ALBA: The question has been asked and
22 answered, Your Honor.

23 THE COURT: I'm sorry, I didn't hear your
24 objection.

25 MR. D'ALBA: The question has been asked and

1 answered. He asked him if Mr. Leuschen told him what
2 he was shooting at, now he's asked him if he named any
3 particular game that he was shooting at.

4 MR. ZAK: I'll withdraw it.

5 THE COURT: I think we have already covered that,
6 I would sustain that objection.

7 MR. D'ALBA: Thank you, Your Honor.

8 MR. ZAK: Those are all the questions I have on
9 redirect.

10 THE COURT: Trooper Myers, this morning we
11 identified as Exhibit Number 4 a rifle, what kind of a
12 rifle was that?

13 THE WITNESS: It's a .243 Remington, I think it's
14 a game master or 76 model, model 7600. Is it Model 6?
15 Model 6.

16 THE COURT: Where did you find that rifle?

17 THE WITNESS: It was actually in view sitting on
18 the passenger's seat.

19 THE COURT: In the vehicle Mr. Leuschen --

20 THE WITNESS: In the vehicle to the right of Mr.
21 Leuschen.

22 THE COURT: Was that vehicle loaded or unloaded?

23 THE WITNESS: The weapon was loaded.

24 THE COURT: All right. Thank you. Anything
25 further of Trooper Myers?

1 MR. D'ALBA: I'd like to recross, if I may.

2 THE COURT: You can if it's an area we haven't
3 already been over, if it's something I opened up,
4 you're welcome to.

5 MR. D'ALBA: Not in terms of what you opened up,
6 Your Honor, but in terms of redirect of the
7 Commonwealth.

8 THE COURT: Well, you ask. If I find it's
9 redundant, we will stop.

10

11

RECROSS-EXAMINATION

12

13 BY MR. D'ALBA:

14 Q Trooper, I just wanted to clarify. You indicated that
15 there are no woodchucks in that area?

16 A That area, I don't believe I've ever seen one.

17 Q But you don't know for a fact that there are no
18 woodchucks there?

19 A No, I have never seen one in that area, in the
20 patrolling of that area.

21 Q Trooper, when you hunt, do you hunt solely for the
22 purpose of killing things or do you hunt for sometimes the
23 enjoyment of it?

24 A I hunt for meat, personally.

25 Q Do you enjoy hunting?

1 A Yes, I do.

2 Q And, in fact, there are hunters that hunt for the sake
3 of -- excuse me, I have to speak up, one of the jurors, Your
4 Honor, indicated during voir dire some difficulty hearing, so
5 I'm going to -- it's true, trooper, is it not, that some people
6 hunt simply for the sake of getting out in the woods, tromping
7 around and enjoying themselves, correct?

8 A That's all part of hunting, yes.

9 Q And the fact that someone would participate in such an
10 activity at a time when the likelihood of killing something
11 might not be great, that wouldn't necessarily take away from
12 that enjoyment, would it?

13 A It would actually be illegal, I believe.

14 Q It would be legal?

15 A It would be -- I said, I believe it would be illegal.

16 Q Oh, it would be illegal?

17 A Yes, you can't hunt deer out of season, you can't hunt
18 small game out of season.

19 Q But there is nothing illegal in going in the woods
20 during a game season with no intention of killing anything, is
21 there?

22 A Not during hunting season, no, you don't have to shoot
23 game.

24 Q And you can hunt all year round in Pennsylvania?

25 A No, I don't believe you can.

1 (Whereupon, Defendant's Exhibit A
2 was produced and marked for identification.)

3 BY MR. D'ALBA:

4 Q Trooper, I hand you what's been marked for
5 identification purposes as Defendant's Exhibit A, can you tell
6 us what that is, sir?

7 A That is the hunting and trapping regulations for
8 Pennsylvania, July 1st, '89 to June 30th, '90.

9 Q Sir, I direct your attention to -- I believe you just
10 opened to the center of that book which has the seasons for the
11 various game in Pennsylvania that you're permitted to hunt,
12 correct?

13 A Yes, it does list the seasons.

14 Q Isn't it also correct that the season for hunting
15 woodchuck extends from July 1st until June 30th?

16 A Other than a small exception, yes, unlimited.

17 Q So, sir, my question to you earlier, isn't it true that
18 it is permissible to hunt in the Commonwealth of Pennsylvania
19 all year round, is that correct?

20 A Woodchucks, yes.

21 Q Thank you. And finally, regarding the casings left
22 behind, you were asked if some hunters leave them and some
23 hunters take them, you indicated that that depended upon whether
24 they reloaded their ammunition?

25 A Yes.

1 Q Some hunters are more conscientious than others, aren't
2 they? Some hunters pick up their shotgun casings, don't they?

3 A Some do that, reload them, others I find that they
4 don't.

5 Q Some pick up things that can't even be reloaded simply
6 because they don't want to pollute or litter the environment, is
7 that correct?

8 A That's possible, yes.

9 Q Some hunters have a greater respect for the
10 environment, for nature, than others, correct?

11 A Yes, definitely.

12 MR. D'ALBA: Thank you, I have no further
13 questions.

14 THE COURT: Anything further, Mr. Zak?

15 MR. ZAK: No, that was all covered on redirect.

16 THE COURT: Thank you, trooper, you may step down,
17 thank you.

18 MR. ZAK: The next witness will be Trooper Marino.

19

20

WILLIAM MARINO,

21

22 having been first duly placed under oath, was examined and
23 testified as follows:

24

25

DIRECT EXAMINATION

BY MR. ZAK

Q Trooper Marino, would you please state your full name and where you are employed?

A Trooper William A. Marino, Pennsylvania State Police, Girard.

Q How long have you been so employed?

A Twenty years.

Q And currently, what is your position with the State Police?

A Right now, member of Crime Unit, PSP Girard.

Q Okay. That would be more or less like a detective, is that right?

A Yes, sir, sort of.

Q Okay.

MR. D'ALBA: Your Honor, if I may, again, we would stipulate to Trooper Marino's qualifications as to his position with the Pennsylvania State Police and his part in this, in the capacity that he did in this matter.

THE WITNESS: Thank you.

THE COURT: Okay. We will accept that stipulation.

MR. D'ALBA: Thank you, Your Honor.

1 BY MR. ZAK:

2 Q Trooper Marino, on February 24th, 1989 were you working
3 in that capacity?

4 A Yes, sir, I was.

5 Q And did Trooper Myers' involvement with Mr. Leuschen
6 come to your attention?

7 A Yes, sir, it did.

8 Q And could you tell us how that happened?

9 A Well, Mr. Leuschen followed Trooper Myers down to the
10 Pennsylvania State Police barracks in Girard. At that time
11 Trooper Myers advised me of the situation and at that point I
12 brought Mr. Leuschen into the barracks, advised him of his
13 Constitutional rights and interviewed him relative to his
14 possession of the firearms.

15 Q And did he sign a paper acknowledging that he was
16 informed of his Constitutional rights?

17 A Yes, he was advised, he was very well advised and he
18 did sign a State Police form indicating he was advised of his
19 Constitutional rights.

20 Q What did he tell you?

21 A At that point he told me that, yes, the firearms were
22 loaded and, however, he was using them for hunting.

23 Q Did he state what he was hunting?

24 A No, sir.

25 Q Did he state where he was hunting?

1 A No, sir.

2 Q Did he go into any detail at all beyond that as to what
3 he was doing with the firearms?

4 A No details, no, no, sir.

5 Q Okay. Did he make any other statement to you at that
6 point?

7 A Basically, he did not appear to understand that he was
8 not permitted to have possession of the loaded firearms in his
9 vehicle.

10 Q Okay. Then what did you do?

11 A At that point I advised him that he was going to be
12 charged with the firearms violation.

13 Q And in your investigation into this matter, what did
14 you do with the firearms in question?

15 A The firearms were taken into custody and the three
16 firearms were submitted to the Pennsylvania State Police, Erie
17 Regional Lab, to test for operability.

18 MR. D'ALBA: Excuse me, Your Honor, again just to
19 try to speed things up, we agree and stipulate that all
20 the guns were operable within the meaning of the law,
21 if that's where -- I think that's where you're going.

22 MR. ZAK: If you're stipulating that --

23 MR. D'ALBA: All the guns can be fired.

24 MR. ZAK: Fine.

25 THE COURT: Is that where you're going?

1 MR. ZAK: Exactly.

2 THE COURT: We will accept that stipulation as
3 well, thank you.

4 BY MR. ZAK:

5 Q And this is a housekeeping matter, but after submitting
6 them to the lab, they were returned to your custody, is that
7 right?

8 A Yes, sir, they were again recorded in our property
9 room, PSP, Girard.

10 Q And what did you do to determine whether or not Mr.
11 Leuschen had a license to carry the firearms?

12 A At the time of the interview, I asked Mr. Leuschen
13 personally if he had a permit for any of the firearms and he
14 could not produce one. I asked Trooper Myers if he, in fact,
15 was able to obtain a firearm permit from Mr. Leuschen. He
16 advised me he could not. I also contacted the Erie County
17 Sheriff's Department to see if he had a record of a license to
18 carry firearms, and they advised me at that time that he did
19 not.

20 (Whereupon, Commonwealth's Exhibit No. 17
21 was produced and marked for identification.)

22 BY MR. ZAK:

23 Q A number of pieces of paper stapled together, would you
24 tell us what that is?

25 A This is a Pennsylvania State Police information

1 certification regarding the license to carry firearms. This is
2 submitted to the Pennsylvania State Police Firearms Division to
3 ascertain if, in fact, any of the individuals have a firearms --
4 license to carry the firearm.

5 Q And you send that in for a response, is that correct?

6 A Yes, sir, that's correct.

7 Q Okay. And this bears the seal, does it not?

8 A Yes, sir, it's seal of the commissioner of the
9 Pennsylvania State Police.

10 MR. ZAK: Mr. D'Alba, are you familiar with this?

11 MR. D'ALBA: You did provide me with a copy of it,
12 and I have no problem with it, no objection to its
13 admission.

14 BY MR. ZAK:

15 Q All right. Now, on Exhibit 17, what does it indicate
16 concerning whether or not Mr. Leuschen has a license or not?

17 A Indicates that he did not have a valid license to carry
18 firearms issued under the provision of Section 6106(b) of the
19 Crimes Code.

20 Q That's the provision concerning carrying a firearm
21 without a license, correct?

22 A Concealed on his person or in a motor vehicle, that's
23 correct.

24 Q Now, there is another box checked, what does that
25 indicate?

1 A This indicates that he did have a valid provisional
2 firearm registration permit for two of the firearms, one, the
3 .357 Dan Wesson and the Ruger .22.

4 Q Now, what is a provisional firearms registration permit
5 as opposed to a license to carry firearms?

6 A In this case, it pertains to the license that's issued
7 to -- it's issued to carry the firearm while hunting in lieu of
8 a rifle.

9 Q All right. A firearm, a handgun rather than a rifle?

10 A Handgun rather than a rifle, correct.

11 MR. ZAK: At this time I'd offer Commonwealth's
12 Exhibit 17 into evidence.

13 MR. D'ALBA: May I see that please again?

14 MR. ZAK: Sure. Okay. Thank you.

15 MR. D'ALBA: Okay. Thank you.

16 MR. ZAK: Do you have any objection to it being
17 admitted?

18 MR. D'ALBA: No objection.

19 THE COURT: It's accepted.

20 BY MR. ZAK:

21 Q Trooper Marino, is Mr. Leuschen in the courtroom?

22 A Yes, sir, he is.

23 Q Could you point him out please?

24 A He's seated next to counsel.

25 MR. ZAK: Okay. Let the record indicate the

1 witness has identified the defendant.

2 BY MR. ZAK:

3 Q How was Mr. Leuschen dressed at the time you
4 interviewed him?

5 A He had a pair of coveralls on.

6 Q Okay. Was he wearing a hunting license?

7 A No, sir, I did not see a hunting license.

8 Q Did he have a cap of any sort?

9 A I do not recall a cap.

10 Q Was one drawn to your attention by anyone?

11 A On that particular date?

12 Q Any time.

13 A Not that I recall, no, sir.

14 Q And does his -- is his appearance today the same or any
15 different from the day that you interviewed him?

16 MR. D'ALBA: Objection to relevance,
17 identification of Mr. Leuschen isn't an issue.

18 THE COURT: Do you want to come to sidebar and we
19 will talk about that?

20 (Whereupon, the following discussion occurred
21 on the record at sidebar:)

22 MR. ZAK: Well, I think it goes to change of
23 appearance, his consciousness of guilt.

24 MR. D'ALBA: I vehemently disagree. I believe
25 there has been -- he's been incarcerated for four

1 months, he's entitled to clean up. Anyway, he wanted
2 to for presentation of the jury. There is no way it's
3 an admission of guilt.

4 MR. ZAK: Well, I think --

5 MR. D'ALBA: And I think the attempt to try to
6 introduce it is a cheap shot.

7 MR. ZAK: At the time he was arrested, and he was
8 not incarcerated at that time, he looked different, and
9 I think the fact that he's cleaned himself up quite
10 beyond the way he was at the time of his arrest is
11 relevant, as indicated, consciousness of guilt.

12 MR. D'ALBA: Your Honor, to say that the length of
13 one's hair is any indication of guilt or innocence is
14 to say that the --

15 MR. ZAK: It's not what we are indicating.

16 MR. D'ALBA: You know --

17 THE COURT: Okay. Attorney Zak, if we had been
18 dealing with an identification issue, I would certainly
19 allow that, but other than you showing me some reason
20 why we have identification involved, I'm going to
21 overrule, I'm going to sustain the objection and
22 prevent this line of questioning.

23 MR. D'ALBA: Thank you, Your Honor.

24 (Whereupon, discussion at sidebar was concluded.)

25 BY MR. ZAK:

1 Q With regard to the rifle that was recovered, what did
2 you do with the rifle?

3 A The rifle was turned over to the member of the Game
4 Commission.

5 Q Okay. Is that the gentleman here in the courtroom?

6 A Mr. Hochlander, correct.

7 Q And for what purpose?

8 A That he was going to cite Mr. Leuschen for the game
9 violations.

10 MR. ZAK: That's all the questions that I have at
11 this time, cross-examine.

12 THE COURT: Attorney D'Alba?

13 MR. D'ALBA: Thank you, Your Honor, I'll be brief.
14

15 CROSS-EXAMINATION
16

17 BY MR. D'ALBA:

18 Q Trooper Marino, you asked Mr. Leuschen numerous
19 questions, did you not, several questions, correct?

20 A I would agree with several questions, yes, sir.

21 Q Okay. Great. In the course of those several
22 questions, do you have reason to believe that Mr. Leuschen
23 misled you in anyway or attempted to lie to you or falsify any
24 information to you, sir?

25 MR. ZAK: I'm going to object.

1 THE WITNESS: Do you want my opinion?

2 MR. ZAK: That's an argumentative question.

3 BY MR. D'ALBA:

4 Q Let me ask you this, you asked him what he was doing,
5 he told you he was hunting, correct?

6 A Yes, sir.

7 MR. D'ALBA: Thank you, no further questions.

8 THE COURT: Anything further, Attorney Zak?

9 MR. ZAK: No.

10 THE COURT: Thank you, trooper, you may step down.

11 MR. ZAK: The next Commonwealth witness will be
12 Mr. Hochlander.

13

14 SHAYNE HOCHLANDER,

15

16 having been first duly placed under oath, was examined and
17 testified as follows:

18

19 DIRECT EXAMINATION

20

21 BY MR. ZAK:

22 Q I have just been corrected. Mr. Hochlander, is that
23 correct?

24 A That's correct.

25 Q Please state your full name and your place of

1 employment.

2 A Shayne Alan Hochlander, Pennsylvania Game Commission.

3 Q And how long have you been so employed?

4 A Four years.

5 Q And taking you back to last February, were you so
6 employed?

7 A Yes, I was.

8 MR. D'ALBA: Again -- excuse me, Officer
9 Hochlander. Again, Your Honor, we would stipulate that
10 Mr. Hochlander is properly employed by the Pennsylvania
11 Game Commission, he was acting within the scope of his
12 employment at the time of his involvement in this
13 matter, just to try to speed things up.

14 THE COURT: Okay. Let the record show that we
15 will accept the stipulation as well and move on.

16 BY MR. ZAK:

17 Q On February 24th, did Mr. Leuschen and his rifle come
18 to your attention?

19 A Yes, sir, they did.

20 Q How was that?

21 A Shortly after four o'clock I had walked into my home
22 and received a phone call almost immediately from my office
23 requesting me to go to the Girard State Police barracks to
24 investigate a potential violation.

25 Q Okay. What did you find when you got there?

1 A I found Mr. Leuschen was in custody and I talked to
2 Trooper Myers about what he had seen and he informed me about
3 the loaded firearms in the vehicle. I checked over the firearms
4 and I talked to Mr. Leuschen briefly.

5 Q Okay. Now, when you spoke to Mr. Leuschen, what did he
6 say to you?

7 A He just basically gave me his location and that he was
8 out there hunting.

9 Q Did he say anything more than that?

10 A No.

11 Q And now, the one weapon you cited him with, is that
12 Exhibit 4, this .243 rifle?

13 A Yes, rifle is correct.

14 Q Okay. When you recovered the rifle, did you recover
15 anything else with the rifle?

16 A I recovered a loaded magazine with the rifle.

17 Q Okay. And exactly what violation of the game laws did
18 you cite this man with?

19 A The section was 2503 of Title 34, and it's loaded
20 firearms in a vehicle, and basically states that you cannot have
21 a loaded firearm in, on or against a vehicle, whether the
22 vehicle is in motion or not.

23 Q Now, from your experience in the Game Commission, did
24 that apply even if a person was hunting?

25 A It applies if he is or is not hunting.

1 Q Okay. And --

2 MR. D'ALBA: Excuse me, Your Honor, could we maybe
3 approach the bench briefly?

4 THE COURT: Surely.

5 (Whereupon, the following discussion occurred
6 on the record at sidebar:)

7 MR. D'ALBA: Would it be appropriate to let the
8 jury know that it --

9 THE COURT: I'm going to do that.

10 MR. ZAK: I have no problem with an instruction.

11 THE COURT: That's what I was going to do after
12 and explain how it fits, they are going to know.

13 (Whereupon, discussion at sidebar was concluded.)

14 BY MR. ZAK:

15 Q Is there anything else you did in this matter beyond
16 that?

17 A No, my involvement was only concerned with a loaded
18 firearm in the vehicle.

19 MR. ZAK: Cross-examine -- wait. Before that, just
20 one small question.

21 BY MR. ZAK:

22 Q Is Mr. Leuschen in the courtroom?

23 A Yes, he is.

24 Q Would you please point him out?

25 A Yes, sir (indicating).

1 THE COURT: Excuse me, Mr. Leuschen, would you
2 mind standing for me, please?

3 (Whereupon, defendant complies.)

4 THE WITNESS: That is Mr. Leuschen (indicating).

5 THE COURT: Let the record show that the witness
6 is pointing to the party who is standing to the left of
7 his lawyer, thank you.

8 MR. ZAK: If I could have the court's indulgence
9 before cross-examination, before I complete my direct,
10 I had another several questions.

11 BY MR. ZAK:

12 Q Are you familiar with the area in question on Lake
13 Road?

14 A Yes, I am.

15 Q Old Lake Road. And are you familiar with the type of
16 hunting activity that goes on there?

17 A Yes, I am.

18 Q What type of hunting activity goes on there?

19 A Basically deer, there is very limited waterfowl hunting
20 on the lake, and grouse and woodcock are the primary forms.

21 Q All right. And what are the seasons for those
22 creatures?

23 MR. D'ALBA: Objection to the seasons, that's not
24 in dispute.

25 MR. ZAK: Well, that was opened up by the defense

1 on cross-examination of the last witness.

2 MR. D'ALBA: That was with regard to woodchucks.

3 THE COURT: I'm going to overrule the objection.
4 I'm not so sure how relevant we are at this point, but
5 I'm going to direct the witness to answer the question.

6 MR. D'ALBA: Thank you, Your Honor.

7 THE WITNESS: Okay. The deer season ends in
8 around the first week of January, similar times for
9 grouse and woodcock and waterfowl ends in December.

10 BY MR. ZAK:

11 Q Is there any season in February?

12 A Woodchucks, foxes, coyote and there was a crow season
13 in.

14 Q All right. At that time of year in that area are there
15 any foxes?

16 A There would be foxes in that area.

17 Q How would one hunt the fox in that area?

18 MR. D'ALBA: Object to that, Your Honor, I think
19 we are getting a little too far astray here.

20 MR. ZAK: Your Honor, I don't think we are because
21 I believe it's part of the defense in this case that
22 this man was hunting and I think we are allowed to
23 explore what he would be hunting in that area.

24 MR. D'ALBA: He's indicated foxes can be hunted,
25 fine, that's consistent with what maybe -- what the

1 defense is raising, there is no issue as to how to hunt
2 a particular species.

3 MR. ZAK: Well, what I'm going to ask is what type
4 of weapon would be used to hunt a fox.

5 THE COURT: I think we will allow the witness to
6 answer this question, but we won't go any further
7 afield. I'll overrule the objection and ask the
8 witness to answer that as well.

9 THE WITNESS: Fox is generally hunted with dogs or
10 with some type of a call and semi -- or shotguns are
11 the standard, semiautomatic rifles or handguns are not
12 legal to hunt with.

13 MR. ZAK: All right. Okay.

14 MR. D'ALBA: I'm going to object to the answer as
15 being nonresponsive and request that it be stricken and
16 a cautionary instruction be given to the jury, Your
17 Honor.

18 THE COURT: Yeah, we will do that.

19 MR. ZAK: Well, I'd object to part of that because
20 the question was permitted as to what is used to hunt
21 them and he gave the answer.

22 THE COURT: I'm going to allow the answer as
23 presented that's responsive to the question and, ladies
24 and gentlemen of the jury, we had a question that was
25 posed and partially answered, the beginning of the

1 answer was responsive to the question, but there was a
2 second and possibly a third clause as to what is
3 illegal to use, and that's not responsive. I'm going
4 to ask the steno to strike that part from the record
5 and I'm going to ask the jury not to pay attention to
6 that second part of the question that was unresponsive
7 to Attorney Zak's question. You may proceed, Mr. Zak.

8 BY MR. ZAK:

9 Q Okay. At that time of year are there woodchucks up and
10 around in that area?

11 A Normally not, they exhibit hibernation.

12 Q Okay. And how about crows?

13 A Crows basically are in Mexico, South America at that
14 time of the year.

15 Q Okay. And are there any other animals that are
16 permitted to be hunted at that time of the year?

17 A Coyotes, skunks, possums, weasels.

18 Q All right. Are there any in that area?

19 A Yes.

20 Q And once again, what sort of weapons would be used to
21 hunt those species?

22 A Generally shotguns and by the same methods that I spoke
23 of before, dogs or some form of call.

24 Q But the weapon in question would be a shotgun, is that
25 right?

1 A Most often.

2 Q The weapon of choice?

3 A A weapon of choice, most often.

4 MR. ZAK: Okay. Those are all the questions I
5 have at this time. Cross-examine?

6 THE COURT: Thank you, Mr. Zak. Attorney D'Alba?

7 MR. D'ALBA: Thank you, if I may have just a
8 moment.

9

10 CROSS-EXAMINATION

11

12 BY MR. D'ALBA:

13 Q Officer, excuse me for not using your last name. I'll
14 do that to save us both embarrassment, but a woodchuck is the
15 same as a groundhog, is that true?

16 A That's correct.

17 Q When's Ground Hog's Day?

18 A February 2nd, I believe.

19 Q And woodchucks tend to come out of their burrows, for
20 lack of knowledge as to what the particular term is, when the
21 weather gets nice, correct?

22 A That's correct.

23 Q Woodchucks don't come out of their burrows on any given
24 calendar because they don't go by that, do they?

25 A That's correct.

1 Q They go by nature?

2 A That's correct.

3 Q So if it was a nice day and it happened to be a little
4 warmer out after presumably a cold winter, there could very well
5 have been groundhogs or woodchucks out that day, is that
6 correct?

7 A Correct, it's a possibility, yes.

8 Q It wouldn't have unreasonable to hunt woodchucks that
9 day, would it?

10 A No, not unreasonable, unlikely.

11 Q It might be unlikely, but it wouldn't be unreasonable?

12 A That's correct.

13 Q I assume that you're an avid outdoorsman?

14 A That's correct.

15 Q You enjoy being out in the woods, walking around?

16 A Yes.

17 Q Did you ever go out without your gun?

18 A Yes.

19 Q Do you ever go out with your gun and not necessarily an
20 intention of hunting, but maybe we'll hunt if we see something?

21 A Yes.

22 Q That's not unusual, is it?

23 A No, it's not.

24 Q Mr. Leuschen made a statement to you about his activity
25 that day, correct?

1 A That's correct.

2 Q And he told you he was hunting?

3 A Yes.

4 MR. D'ALBA: No further questions.

5 THE COURT: Attorney Zak?

6

7 REDIRECT EXAMINATION

8

9 BY MR. ZAK:

10 Q Mr. Hochlander, you indicated in response to Mr.
11 D'Alba's question that it would be reasonable, but unlikely, to
12 be hunting woodchucks; what did you mean by that?

13 A The chances of seeing one are unlikely, although
14 possible, and I have never checked a woodchuck hunter in that
15 month in my four years.

16 Q Now, when woodchucks are hunted, would they be hunted
17 in an area that we have described, a wooded area or an open
18 area?

19 A They generally are hunted in an open area, fields.

20 Q Now, the area around Old Lake Road that we are
21 discussing, are there any fields?

22 A No.

23 MR. ZAK: That's all the questions I have.

24 THE COURT: Thank you. Attorney D'Alba, are you
25 finished with the witness?

1 MR. D'ALBA: No questions, Your Honor.

2 THE COURT: All right. Thank you, officer, you
3 may step down, thank you very much.

4 Ladies and gentlemen of the jury, I want to tell
5 you something that's going to clarify a little bit. If
6 you recall this morning, I indicated that the defendant
7 is charged with three crimes and they all relate to a
8 pistol and there are three pistols that have been
9 presented. Now, in fact, the defendant was charged
10 with a fourth crime, but that is the decision that I
11 make and I decide guilt or innocence on that, and you
12 really don't have anything to do with that, that's the
13 game violation and that's the reason that I allowed the
14 rifle to be presented, and that's the reason why the
15 officers testified about that rifle. You need not be
16 concerned with how that rifle fits into what we are
17 doing, you decide the first three charges and I will
18 decide that one. Thank you. Attorney Zak?

19 MR. ZAK: If the Court will bear with me for just
20 one moment.

21 (Whereupon, there was a pause in the proceedings.)

22 MR. ZAK: At this time the prosecution rests.

23 THE COURT: Thank you.

24 MR. D'ALBA: Your Honor, I have instructed my
25 first witness to be here. He informed me that he'd be

1 here at three o'clock, so if I may have a moment to
2 check, hopefully my first witness will be here.

3 THE COURT: Okay. Why don't we do this, why don't
4 we stand adjourned for ten minutes. Let's meet back
5 here at 3:10 and that will give our stenographer a
6 break, then we can get through your part of the case at
7 that time, so we will stand adjourned until 3:10.

8 (Whereupon, court recessed at 2:55 p.m. and
9 reconvened at 3:11 p.m.)

10 THE COURT: Mr. D'Alba?

11 MR. D'ALBA: Thank you, Your Honor. The defense
12 would call Dan Seaman to the stand please.

13 MR. ZAK: May we approach the bench?

14 THE COURT: Surely.

15 (Whereupon, the following discussion occurred
16 on the record at sidebar:)

17 MR. ZAK: I would ask for an offer of proof at
18 this time.

19 MR. D'ALBA: Mr. Seaman, Your Honor, is the owner
20 of the Elk Creek Sports Club which is in close
21 proximity to the location where my client was hunting
22 that day. My client has done business with him for a
23 couple years now. Mr. Seaman will be testifying of his
24 knowledge of my client, of Mr. Leuschen, of his hunting
25 activities, of his fishing activities, and in

1 particular, the fact that he was in the store several
2 times a week during the period of time in question. He
3 won't testify to acknowledge the particular day, he
4 doesn't remember February 24th, but he will be saying
5 he was in the store several times that week, he bought
6 guns, he bought ammunition, he bought targets, et
7 cetera, bought fishing equipment, to the fact that he's
8 an avid outdoorsman, which I think is relevant.

9 MR. ZAK: I don't think it is. It's not relevant
10 to what he was doing that day, the fact that he had
11 guns suitable for hunting with him as well as the one
12 that wasn't and had some hunting equipment. He had a
13 hunting license, we agree with that and he had those
14 provisional permits, we agree with that. The evidence
15 is really immaterial, I think it's immaterial.

16 THE COURT: Ken, but we can't restrain Mr. D'Alba
17 from presenting his case in any manner he wants and he
18 can identify the nature of the man, the nature of his
19 person. I don't have any problem with that.

20 MR. ZAK: Are you trying to put in character?

21 MR. D'ALBA: Not at this point, not with this
22 witness. The prosecution is trying to say that, you
23 know, their argument is that you don't hunt at this
24 time of year; the fact that someone buys hunting
25 supplies regularly at that time of year would be

1 relevant.

2 THE COURT: Well, you could do that, okay. I will
3 allow that witness to testify to what Mr. D'Alba tells
4 me he's going to testify to.

5 MR. ZAK: All right.

6 MR. D'ALBA: Thank you, Your Honor.

7 (Whereupon, discussion at sidebar was concluded.)

8

9 CLARK DANIEL SEAMAN.

10

11 having been first duly placed under oath, was examined and
12 testified as follows:

13

14 DIRECT EXAMINATION

15

16 BY MR. D'ALBA:

17 Q Sir, would you please state your name for the record?

18 A My full name is Clark Daniel Seaman.

19 Q Mr. Seaman, I'd ask that you lean forward a little bit
20 so the jurors can hear everything that you have to say.

21 THE COURT: Use the mike, if you can.

22 BY MR. D'ALBA:

23 Q Okay. Mr. Seaman, would you spell your last name?

24 A My last name is spelled S-e-a-m-a-n.

25 Q Okay. Very good. What is your residence?